

Per G.S. SINGHVI, CJ

In this petition, the petitioners have prayed for issue of a mandamus to the respondents to prevent land grabbing of the tank known as Malabanda alias Dabbala Cheruvu measuring 88 cents situated in Sasanam Revenue Village of Palasa Mandal, Srikakulam District.

In the affidavit filed by him, petitioner No.1 has averred that the tank in question is a public tank and is in existence since time immemorial. It has been further averred that in September and October, 2002, some private persons started grabbing the land of the tank. It has been further averred that one Ippili Mallaiah filed suit against non-petitioner Nos.1 to 3 claiming the tank to be his own property. District Collector, Srikakulam who has been impleaded as defendant has taken up the stand that the tank is dedicated for public purpose and attempts are being made to grab the same. In para 13 of his affidavit, petitioner No.1 has averred that a few days back, some land grabbers attempted to dig pits in the suit land with a view to start construction but the villagers of Kasibugga and Palasa prevented them from doing so. Thereafter, representations were made to the district authorities to prevent grabbing of the tank land but no concrete step has been taken in that direction. In support of his assertion regarding grabbing of tank land, the petitioners have relied on some newspaper cuttings.

In the counter affidavit filed by Sri P.Madhava Rao, Mandal Revenue Officer, Palasa, it has been averred that as per revenue records of Sasanam Village, the lands comprised in Survey No.191/3 measuring 85 cents is classified as 'Zeroiti Dry' and is registered in the

name of Balla Vasudev Naidu, S/o Neelam Naidu, vide patta No.68. As per field measurement book of Sasanam Village, the land in question is detailed as tank and noted as "Koneru Lothu 12' ". As per adangal extract for the Faslies 1371, 1372, 1375 to 1381, the land belongs to B. Vasudev Naidu. Sri P.Madhava Rao has further averred that in the suit filed by Ippili Mallaiah, Senior Civil Judge, Sompeta passed order dated 01-11-2002 requiring the parties to maintain status quo till the visit of the Commissioner. Thereafter, in terms of the direction of the Court, Mandal Revenue Officer, Palasa filed a detailed statement about existence of Malabanda tank which is being used by public for communal purposes. According to Sri Rao, in furtherance of the instructions given by District Collector, Srikakulam, he has taken steps to stop construction. Along with his affidavit, Sri P. Madhava Rao has filed copies of order dated 01-11-2002 passed by Senior Civil Judge, Sompeta and notice dated 21-02-2002 issued by him (Mandal Revenue Officer) for stopping construction.

We have heard learned counsel for the parties. In our opinion, even though the petitioners claim to have filed this petition in public interest and their main prayer is innocuously worded, it is not possible to entertain the same because the issue whether the tank in question is a public land or a private property cannot be decided by the High Court under Article 226 of the Constitution, more so, because suit involving determination of the same issue is pending in the Court of Senior Civil Judge, Sompeta. In our view, the petitioners should have, instead of filing writ petition under Article 226, applied for their impleadment as parties to the suit and if permitted by the trial Court, they could adduce evidence to show that the disputed tank is a public tank.

There is another reason for our disinclination to entertain the petitioner's grievance. They have not impleaded Ippili Mallaiah and B. Vasudev Naidu as parties to the writ petition and without giving notice

and opportunity of hearing to those persons, this Court cannot adjudicate on the nature of the tank as well as its ownership.

For the reasons state above, the writ petition is dismissed. However, liberty is given to the petitioners to apply for their impleadment as parties to the suit filed by Ippili Mallaiah.

As a sequel to dismissal of the writ petition, WPMP No. 4616 of 2006 filed by the petitioners for interim stay is disposed of as infructuous.

G.S.SINGHVI, CJ

G.V. SEETHAPATHI, J

20-06-2006

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